

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5607 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -

2. To be referred to the Reporter or not? -

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3. Whether Their Lordships wish to see the fair copy of the judgement? -

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge?
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SHIVPALSING

Versus

UNION OF INDIA

Appearance:

MR PM THAKKAR for Petitioner

MR SS SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/06/98

ORAL JUDGEMENT

1. The Commandant (H) CCG received an information that heavy theft of steam coal was being committed at Loco Shed Veraval with the active connivance of RPF staff. Therefore, IPF (CIB) BVP along with his staff was directed to keep a secret watch in Local Shed VRL on

31-8-1985. At about 10.15 hours the raiding party noticed that two outsider women were carrying steam coal in gunny bags and they followed them. The women on seeing them ran away towards hutments leaving steam coal. The culprits were subsequently apprehended. It was also found that huge quantity of steam coal lying close to the hutments as well steam coal filled in gunny bags which were removed from the stack on the night of 30/31-8-85.

2. During the duty hours of Kantilal and Shivpal Singh constables and also general supervision duty of Head Constable Gangaram, IPF (CIB) called the RPF staff of Veraval to assist him but ASPF VRL being on sick list Head Constable Gangaram the next man available on general supervision duty did not come immediately for help, locked the office and went away. In the meanwhile, a mob of about 30 to 40 persons attacked on the raiding party and assaulted them by pelting stones and took away the accused women from RPF custody. However, with the help of Town Police Veraval 4 outsiders were arrested with 100 Kgs. steam coal and offence was registered u/s 332, 114, 186 and 564 of the IPC and also u/s 3 of the RPF Act against the outsiders.

3. It appeared to the Commandant (H) CCG from the statements of Premji, Karsan and Devji, coal loaders of Veraval that huge quantity of steam coal was removed with the active connivance of Kantilal, Shivpal Singh and Gangaram RPF staff from Loco Shed on 30/31-8-1985. These three persons, Kantilal, Shivpal Singh and Gangaram abused their position as Railway servants and failed to discharge their legitimate duties to prevent and detect theft of steam coal committed from the Loco Shed. The Commandant (H) CCG found these three persons responsible. The Commandant (H) CCG felt that disciplinary proceedings under the normal rules would not be reasonable as all of them were involved and the theft was committed by the outsiders with their active connivance and they would be instrumental in pressuring the witnesses not to give their evidence and independent evidence would not be available against the RPF staff. Under the circumstances, the Commandant (H) CCG was fully satisfied that the circumstances of the case are such that it was not reasonably practicable to hold inquiry in the manner provided under Rule 44 of RPF Rules, 1959 hence he dispensed with inquiry. The conduct of RPF staff Kantilal, Shivpal Singh and Gangaram amounts to failure to maintain absolute integrity and devotion to duty and contravention of Rule 3 of the Railway Service Conduct Rules, 1966 and also amounts to serious misconduct so as to render their retention in service undesirable. As

such after recording the findings and exercising the powers under Rule 57 (b) of the RPF Rules, 1959 the Commandant proposed to impose penalty of dismissal from service. A show cause notice dated 26th September, 1985 was issued to the petitioner giving an opportunity of making representation on the penalty proposed to the petitioner on the basis of the findings of the Commandant (H) CCG and representation was to be made within 7 days from the date of receipt of the show cause notice and that representation was to be considered by the Commandant (H) CCG.

4. The petitioner has filed this petition challenging the show cause notice dated 26-9-1985 as to why the penalty proposed should not be awarded. The learned counsel for the petitioner has fairly conceded the position of law on the point that the authority concerned is empowered to dispense with inquiry under the provisions of Clause (b) of second proviso to Article 311 (2) of the Constitution of India and Rule 47 (b) of the Railway Protection Force Rules, 1959. Learned counsel for the petitioner submitted that the Commandant (H) CCG was not justified to dispense with the inquiry and to award punishment of dismissal without affording any opportunity to RPF staff Kantilal, Gangaram and Shivpal Singh and the circumstances of the case do not justify to dispense with the inquiry at all and the Disciplinary Authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail.

5. This case was heard yesterday and today. Learned Counsel Mr. D.K. Nakrani appeared today only on behalf of learned counsel Mr. S.S. Shah to represent the respondents. But he could not assist the court to any extent. This is a case in which the penalty of punishment has been proposed and notice has been issued to the petitioner giving opportunity to file representation within a stipulated time. The cases referred by the learned counsel for the petitioner were against the final orders where the delinquent officials were awarded final punishment of dismissal. In the facts and circumstances of the case, the petitioner has been given an opportunity to represent his case before the appropriate authority. The appropriate authority has recorded the findings on the basis of the statements of some coal loaders and in the facts and circumstances of the case, it was not practically possible to hold inquiry

against the petitioner in the manner provided under Rule 44 of the RPF Rules, 1959. No affidavit-in-reply (counter affidavit) of the respondents is on the record. Though I found a copy of the affidavit of Ranjit Ramswarup Singh Raghav, Commandant (HQ), Railway Protection Force Head Quarter, Bombay. It is mentioned in para 2 of that affidavit that it is only a show cause notice under Rule 47 (b) of the R.P.F. Rules, 1959, after final order, appeal can be preferred to Sr. Commandant (HQ), Bombay, further revision is provided to D.I.G. (Director Inspector General) of Railway Protection Force. In my opinion, it is a premature stage for judicial review of the administrative show cause notice for proposed penalty issued by the competent authority. This is also a premature stage to arrive at a finding that the competent authority was not justified to dispense with the inquiry and issued the notice and that notice is illegal and against the principles of natural justice.

6. Accordingly, this petition is hereby dismissed. Interim order dated 11-10-1985 of this Court stands vacated. Rule is discharged, with no order as to costs.

7. The learned counsel for the petitioner submitted that the petitioner has made the representation to the competent authority. In case such representation has been received by the competent authority, the competent authority will consider the same in accordance with law as far as possible preferably within three months from the date of production of a copy of this order along with the copy of that representation which has already been filed by the petitioner.

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